

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

Robert A. Mathers )

MUR 5388

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities and by a Complaint filed with the Commission by Jay Hochberg. The Commission found reason to believe that Robert A. Mathers ("Respondent") knowingly and willfully violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) and 11 C.F.R. § 111.18(d).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

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MUR 5388  
Robert A. Mathers  
Conciliation Agreement

2

IV. The pertinent facts in this matter are as follows:

1. James Treffinger was a candidate for the U.S. Senate in New Jersey in the June 6, 2000 Republican primary election. Jim Treffinger for Senate, Inc. ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and is the authorized principal campaign committee for Mr. Treffinger's 2000 and 2002 Senatorial campaigns.

2. Respondent has been the treasurer of the Committee since March 2002.

3. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person may make a contribution to a candidate for federal office, or his authorized political committees, in excess of \$1,000 per election.<sup>1</sup> 2 U.S.C. § 441a(a)(1)(A). The Act also makes it unlawful for candidates and political committees to knowingly accept any contribution in violation of section 441a. See 2 U.S.C. § 441a(f).

4. The treasurer of a political committee has the responsibility for determining the legality of any contributions received by the committee. 11 C.F.R. §§ 103.3(b)(3), 110.1(b)(3), 110.2(b)(3). In the case of excessive contributions, the treasurer has sixty days from the date of receipt to reattribute, redesignate, or refund the contribution to cure the illegality. 11 C.F.R. § 102.9(e); AO 1992-15; AO 1988-41.

5. In an election cycle, the Act treats primary and general elections as two separate elections. 2 U.S.C. § 431(1)(A); 11 C.F.R. § 110.1(b)(2).

6. While it is permissible to accept contributions for the general election prior to the primary election, an acceptable accounting method must be employed to distinguish between

<sup>1</sup> The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Conciliation Agreement exclude the changes made by or subsequent to BCRA.

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MUR 5388  
Robert A. Mathers  
Conciliation Agreement

3

1 primary and general election contributions. 2 U.S.C. § 441a(a)(6); 11 C.F.R. § 102.9(e); AO  
2 1992-15; AO 1980-122; AO 1988-41.

3 7. Prior to the 2000 Republican primary election for the U.S. Senate in New  
4 Jersey, the Committee received \$227,080 in contributions designated for the 2000 general  
5 election. On June 6, 2000, Mr. Treffinger lost the primary election.

6 8. Since Mr. Treffinger did not participate in the 2000 general election, these  
7 contributions became excessive and the Committee was required to obtain reattribution of the  
8 contributions to another contributor in accordance with 11 C.F.R. § 110.1(k)(3), to obtain  
9 redesignation of the contributions to another election in accordance with 11 C.F.R.  
10 §§ 110.1(b)(5) or 110.2(b)(5), or to refund the contributions within sixty days of the June 6, 2000  
11 primary election. 2 U.S.C. § 441a(f); 11 C.F.R. § 102.9(e); AO 1992-15; AO 1988-41; *see also*  
12 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3), 103.3(b)(3).

13 9. None of the excessive general election contributions were reattributed,  
14 redesignated, or refunded within sixty days. To date, only nine of the excessive contributions,  
15 totaling \$6,400, have been refunded.

16 10. The Committee also received \$10,550 in excessive 2000 primary election  
17 contributions. The contributions originated from thirteen individuals who had already met their  
18 \$1,000 contribution limits for the 2000 primary election. The excessive primary election  
19 contributions had to be reattributed, redesignated, or refunded within sixty days.

20 11. None of the excessive primary election contributions were reattributed,  
21 redesignated, or refunded within sixty days. To date, only \$1,250 of the excessive contributions  
22 have been refunded.

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MUR 5388  
Robert A. Mathers  
Conciliation Agreement

4

1           12. Twice during 2002, the Commission's Reports Analysis Division ("RAD")  
2 provided Respondent with detailed information on the excessive 2000 contributions. RAD  
3 notified Respondent of his obligation under 11 C.F.R. § 102.9(e) to refund the outstanding  
4 contributions.

5           13. Respondent failed to refund the remaining excessive 2000 contributions.

6           14. On July 25, 2003, the Commission issued Advisory Opinion 2003-17 ("the  
7 AO"). In the AO the Commission noted that the Committee had accepted contributions for both  
8 the 2000 and 2002 general elections, and warned that to the extent funds were needed for the  
9 purpose of refunding those contributions, no funds could be used to pay legal expenses related to  
10 Mr. Treffinger's criminal defense.

11           15. At the time the AO was issued, the Committee's refund obligation already  
12 exceeded its cash on hand. Nevertheless, beginning in August 2003, Respondent authorized six  
13 payments to law firms that represented Mr. Treffinger in his May 2003 court appearance and  
14 October 2003 criminal sentencing. Thus, contrary to the explicit language of the AO,  
15 Respondent authorized the use of funds needed to meet the Committee's refund obligation to pay  
16 Mr. Treffinger's legal fees.

17           16. It is Respondent's personal responsibility, as the Committee's treasurer, to  
18 refund the excessive contributions as required by section 102.9(e)(3) of the regulations once Mr.  
19 Treffinger failed to qualify for the general election.

20           17. Through Respondent's interaction with RAD, he knew of this obligation not  
21 later than June 2002. However, he did not meet it. To the contrary, Respondent used the illegal  
22 contributions to pay for Mr. Treffinger's legal fees. See MUR 4547 (Clinton/Gore '96)

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MUR 5388  
Robert A. Mathers  
Conciliation Agreement

5

(Commission found liability under 2 U.S.C. §§ 441a(f) and 441f when, upon learning that contributions were illegal, the contributions were not refunded as required by 11 C.F.R. § 103.3(b)(2)).

V. Respondent violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e) by accepting \$237,630 in excessive contributions. Respondent will cease and desist from violating 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Fifty-Seven Thousand Dollars (\$57,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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MUR 5388  
Robert A. Mathers  
Conciliation Agreement


6

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

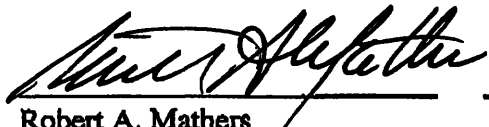
BY:

  
Rhonda J. Vosdignh  
Associate General Counsel  
for Enforcement

Date

4/24/06

FOR THE RESPONDENT:

  
Robert A. Mathers  
Treasurer

Date

3/22/06

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